THE STATUS OF THE DOCTRINE OF CHARITABLE IMMUNITY IN HOSPITAL CASES

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THE REASONING OF CHARITABLE IMMUNITY

The doctrine of charitable immunity first appeared in the United States in *McDonald v. Massachusetts Gen. Hosp.*[1] In that case it was held that a charitable hospital was not liable to a patient for negligent treatment because the funds of a charity could not be applied to pay such claims. However, the court apparently recognized that the hospital could be held liable if the surgeon had been negligently selected, although in a later Massachusetts case[2] the court said that no hospital liability existed even though the employee was selected negligently.

In the *McDonald* case, the Massachusetts court relied upon the English case of *Holliday v. Vestry of the Parish of St. Leonard*[3] which did not involve the tort liability of a charitable institution. The *Holliday* case in turn had relied upon language in two previous English cases[4] that stated no trust funds could be diverted to pay damages. Neither of these cases involved the tort liability of charitable institutions. Apparently the Massachusetts court was unaware that before *McDonald,* two English decisions[5] overruled this line of authority.

Although in 1879 a Rhode Island court refused to apply the doctrine of charitable immunity in a case involving a hospital,[6] it was accepted by the Maryland court in *Perry v. House of Refuge*[7] and has been adopted to some extent and for some duration by most American jurisdictions.

Charitable immunity it must be remembered, is a doctrine applicable to all charities, including not only hospitals but churches, schools and all charitable health and social agencies. While the

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1 120 Mass. 432 (1876).

2 Roosen v. Peter Bent Brigham Hosp., 235 Mass. 66, 126 N.E. 392 (1920).

3 11 C.B. (N.S.) 192, 142 Eng. Rep. 769 (C.P. 1861).

4 Heriot's Hosp. v. Ross, XII Clark & F., 507, 8 Eng. Rep. 1508 (H.L. 1846); Duncan v. Findlater, VI Clark & F., 894, 7 Eng. Rep. 934 (H.L. 1839).

5 Mersey Docks & Harbour Bd. v. Gibbs, XI H.L. C. 686, 11 Eng. Rep. 1500 (H.L. 1866); Foreman v. Mayor of Canterbury, L.R. 6 Q.B. 214 (1871).

6 Glavin v. Rhode Island Hosp., 12 R.I. 411 (1879).

7 63 Md. 20 (1885).

exact definition of a charity may vary slightly from state-to-state, the concept basic to all definitions is the lack of private profit. Many writers, especially in the hospital field, refer to a charitable hospital as a "voluntary non-profit hospital," but the courts have generally used the term "charitable hospital." It is also interesting to note that as state after state has modified or abolished the doctrine of charitable immunity, the critical decision has in each instance involved a hospital.

As the various states in over 700 cases have examined the question of charitable immunity, at least four different theories have been used to explain and justify the doctrine. Theories are often used in conjunction with each other and are often intermixed in the court's reasoning.

The most traditional and enduring is the trust fund theory. This reasoning considers that the funds of a charity constitute a trust and that payment of tort claims would act as a diversion of these funds from the charitable purposes for which they were intended. This is the theory set forth in the *McDonald* case and is the most prevalent theory in those states still recognizing the doctrine. Underlying the trust fund theory is the idea that the application of funds to satisfy tort claims would impair the usefulness of the charity by depleting the assets and that the loss of the funds might make it difficult or impossible for it to carry out its charitable function. It is also argued as additional justification that donors to a charity do not intend that their gifts be used to pay tort claims.

The theory has also been advanced that a beneficiary of the charity, such as a hospital patient, assumes the risk of the charity's negligence and by implication waives any right he may have to recover from the hospital when he accepts benefits.[8] This reasoning emphasizes that the hospital confers a benefit upon the patient. The weakness in this theory is that it does not take into consideration modern medical prepayment plans and other facts of modern medical care which remove much of the charity and beneficiary nature of the hospital-patient relationship.

Another theory advanced to support charitable immunity is that the doctrine of *respondeat superior* is not applicable to charitable institutions.[9] This theory reasons that the doctrine of *respondeat superior* is based on the use of servants to make a profit for their master. The law imposes liability on the master for those acts of the servant which occur while he is engaged in

[8] Powers v. Massachusetts Homeopathic Hosp., 109 Fed. 294 (1st Cir. 1901).

[9] Hearns v. Waterbury Hosp., 66 Conn. 8, 33 Atl. 595 (1895).

aiding the master in making a profit. Since a charitable hospital does not seek to make a profit, so the reasoning goes, there is no basis to impose liability upon the hospital under the doctrine of *respondeat superior.*

A general public policy theory has also been used to justify the immunity of charities.[10] Courts using this theory generally blend it with one of the reasons stated above but do not seek to establish a rigid theory for the immunity doctrine. Public policy is the theory used when the courts are unwilling to assert their reliance upon one of the specific theories, perhaps because each has inherent weaknesses.

Despite the theory used, however, and even under the most extensive application of charitable immunity, the charitable institution is generally not held immune when the activity resulting in the tortious injury was a commercial endeavor. Liability is generally imposed when the activities are non-charitable, even though the revenue was or would be devoted entirely to charitable purposes. Thus, the significant initial question is whether the activity which caused the injury is of a charitable or non-charitable nature. At present, if the act is found to be non-charitable, no jurisdiction grants immunity to the charitable institution.[11]

Several states have either by statute or court decision made recovery against the charity dependent upon the presence of non-trust assets. Such assets are generally defined as property not directly and exclusively utilized in the charity's work and includes proceeds of liability insurance.[12] This doctrine has a conceptual consistency with the trust fund theory of immunity, which rests upon protecting the charity through protecting its trust assets. However, it should be noted that using the funds of the charity to purchase liability insurance is, in essence, a diversion of trust assets from charitable use to make funds available to pay personal injury claims. Also, this exception to the immunity doctrine has one other inconsistency. The use of non-trust assets, such as commercial property, to satisfy a judgment arising from a tort action may lead to a loss of revenue to the charitable institution which may adversely affect the performance of its charitable functions and in fact cause an indirect depletion of the trust funds. Thus, though the trust funds are held inviolate, the work of the charity could suffer.

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[10] Jensen v. Maine Eye & Ear Infirmary, 107 Me. 408, 78 Atl. 898 (1910).

[11] In Eads v. Y.W.C.A., 325 Mo. 577, 29 S.W.2d 701 (1930) the court applied the immunity rule when the activity was of a commercial nature. That decision was later disapproved and perhaps stands as the high water mark of the immunity doctrine.

[12] See Anderson v. Armstrong, 180 Tenn. 56, 171 S.W.2d 401 (1943).

Arkansas,[13] Louisiana,[14] and Maryland [15] have enacted "direct action" statutes which permit suit by the injured party directly against the insurers of charitable institutions and require that the defense of the charitable nature of the insured may not be interposed by the insurer. Colorado,[16] Illinois,[17] Tennessee,[18] and Georgia [19] have, by decision, imposed liability on charitable hospitals to the extent of their insurance coverage.

In some states the extent of immunity granted to a charitable hospital is made dependent upon the relationship of the injured person to the hospital. The general categories of persons considered are employees, strangers, and beneficiaries. No state at present considers strangers and employees differently in determining the liability of a charitable institution. Thus the determining factor in jurisdictions that reach different results because of the injured's status appears to be whether the injured person is a beneficiary.

There is a tendency of the courts to grant charitable immunity more readily when the injury is incurred by a beneficiary than when the injured person is an employee or a stranger. Illustrative is the decision in *Koehler v. Ohio Valley Gen. Hosp. Ass'n.*[20] In that case it was held that the charity was liable to a private patient of a physician who rented space in the hospital to conduct his private practice. This opinion stated that the physician's patient was a stranger with respect to the hospital and the defense of charitable immunity was not available. The opinion intimated that if the injured person had been a hospital patient there would have been no liability because a beneficiary would not have been entitled to recover. Persons accompanying a discharged patient[21] have generally been considered strangers. A private duty nurse, employed by the patient rather than the hospital, has also been considered to be a stranger.[22]

A distinction is occasionally made between patients that pay for the services they receive and nonpaying patients. In juris-

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13 Ark. Stat. Ann. § 66-3240 (Supp. 1963).

14 La. Rev. Stat. Ann. § 22:655 (Supp. 1963).

15 Md. Ann. Code art. 48A, § 85 (1957).

16 St. Lukes Hosp. Ass'n v. Long, 125 Colo. 25, 240 P.2d 917 (1952).

17 Moore v. Moyle, 405 Ill. 555, 92 N.E.2d 81 (1950).

18 Vanderbilt Univ. v. Henderson, 23 Tenn. App. 135, 127 S.W.2d 284 (1938).

19 Cox v. N. M. Dejarnette, 104 Ga. 664, 123 S.E.2d 16 (1961).

20 137 W. Va. 764, 73 S.E.2d 673 (1952).

21 Cohen v. General Hosp. Soc'y, 113 Conn. 188, 154 Atl. 435 (1931).

22 Rose v. Raleigh Fitkin-Paul Morgan Memorial Hosp., 136 N.J.L. 553, 57 A.2d 29 (1948); note that the decision in Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958), eliminated charitable immunity in New Jersey, and thus the *Rose* case is no longer law in New Jersey.

dictions where such a distinction is recognized, the theory advanced is that a paying patient is not a beneficiary of the charity and thus should be able to recover for the hospital's negligence.[23] Most states that recognize charitable immunity do not distinguish between paying and nonpaying patients. The rationale of this position is that payments made by patients for treatment are devoted to the overall charitable work of the hospital and since no profit is being made, no reason exists to permit the depletion of the assets to pay personal injury claims. Whether the patient is a paying one appears to have far less significance when the immunity rests on the trust fund approach than when it rests upon the concept of some kind of an implied waiver.

The extent to which charitable immunity may be applied may also vary because of the nature of the negligence. Thus, a failure to exercise due care in the selection and retention of employees is a ground for imposing liability upon charitable hospitals otherwise accorded immunity. Such a failure constitutes corporate neglect. Thus, in *St. Paul's Sanitarium v. Williamson*[24] a Texas court held that a charitable hospital was liable for negligence in selecting its servants where a young girl, hired for running errands and dishwashing, was permitted to place a hot water bottle in a patient's bed. The patient was severely burned, and evidence indicated that the girl had performed such tasks in the past. The court held that the hospital had not met its duty to select only competent persons to render care to patients and was liable for corporate neglect, although no liability would have existed under Texas law if a competent and experienced employee had placed the hot water bottle in the patient's bed.

A failure to properly instruct an employee in the use of a machine has been held to constitute corporate neglect for which the charitable hospital would be held liable although it would otherwise be immune.[25] Corporate negligence also includes furnishing non-suitable or defective equipment used in rendering hospital care. In *Medical and Surgical Memorial Hosp. v. Cawthorne*[26] it was held that a charitable hospital providing an improvised heat cradle was liable for an injury received by the patient. In *Clampert v. Sister of Charity*[27] a failure to provide a bassinet for an infant

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[23] Wheat v. Idaho Falls Latter Day Saints Hosp., 297 P.2d 1041 (Idaho Sup. Ct. 1954).

[24] 164 S.W. 36 (Tex. Civ. App. 1914).

[25] Hotel Dieu v. Armendarez, 210 S.W. 518 (Tex. Com. App. 1919).

[26] 229 S.W.2d 932 (Tex. Civ. App. 1949).

[27] 17 Wash. 2d 652, 136 P.2d 729 (1943).

patient and the use of a defective heating pad constituted corporate neglect for which the hospital was held liable.

It should be noted that several states have considered the distinction between imposing the liability for corporate negligence and imposing liability for negligence of employees and have rejected it, holding that charitable immunity exists in both instances. Also, a Pennsylvania decision [28] denied the imposition of liability upon a charitable institution for negligence consisting of failure to keep the sidewalk in good repair, a duty imposed by statute and ordinance.

A History of Charitable Immunity in Ohio

The first Ohio case in which the doctrine of charitable immunity was applied was *Taylor v. Protestant Hosp. Ass'n*,[29] decided in 1911. The plaintiff, as administrator of his deceased wife's estate, brought an action alleging that a nurse employed by the defendant hospital had negligently miscounted the gauze sponges used in surgery on his wife. The plaintiff contended that, as a result of the miscount, a sponge had been left in the decedent's body, causing her death. The hospital's defense was that because of its organization as a public and charitable corporation, it was exempt from liability for the negligence of the nurse-employee. The trial court overruled a general demurrer to this defense, and the plaintiff appealed. On appeal, the plaintiff took the position that the doctrine of *respondeat superior* was applicable, notwithstanding the charitable nature of the corporation, and that since the decedent was a paying patient, a special contractual relationship existed which imposed an obligation on the defendant different from that created when a nonpaying patient was admitted.

The Supreme Court of Ohio refused to distinguish between patients who were able to pay for services and those who were not. The court adopted the view that the hospital corporation did not become any the less a charity by receiving funds from those able to pay, since all hospital funds were devoted to a charitable purpose. However, the court did acknowledge a possible contractual duty on the part of the hospital to use due and reasonable care in the selection of employees. This, however, was not presented as an issue in the appeal.

While the court in the *Taylor* case recognized that the doctrine of *respondeat superior* was designed to meet the ends of justice, it

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[28] Bond v. City of Pittsburgh, 368 Pa. 404, 84 A.2d 329 (1951).

[29] 85 Ohio St. 90, 96 N.E. 1089 (1911).

concluded that to apply it to a charitable organization would not be justified:

> Doubtless the rule will be extended to meet the requirements of manifold new conditions brought about by growth and advance. Courts are constantly confronted with the necessity of extending established principles to new conditions. But in this case it is sought to extend the rule to masters different from others, and who do not come within its reason, and to hold a public charity involving no private profit responsible for the negligence of servants employed solely for a public use and a public benefit. We think such an extension is not justified. Public policy should and does encourage enterprises with the aims and purposes of defendant, and requires that they should be exempted from the operation of the rule.[30]

In essence, then, it was decided that the public policy in favor of charitable organizations was controlling, notwithstanding the recognized public purpose served by an application of the *respondeat superior* doctrine.

In 1922, the *Taylor v. Flower Deaconess Home and Hosp.*[31] case directly dealt with the issue of whether charitable organizations in Ohio enjoyed total immunity, or whether certain exceptions to the general rule of the first *Taylor*[32] case would be recognized. The plaintiff predicated his right to recovery on the negligence of the defendant hospital in its failure to exercise ordinary care in the selection and retention of a nurse who administered an injection of scalding hot water to the plaintiff following surgery, causing serious burns. The hospital, relying upon the 1911 *Taylor* case, presented the defense of charitable immunity. As noted, the supreme court in the earlier *Taylor* case had in passing suggested that liability would be imposed if the charity had been negligent in selecting its employees. In this case, the question was squarely at issue. After reviewing authorities from other jurisdictions, the supreme court stated:

> . . . the exemption from liability of such organizations, subject to the condition of care in the selection and the retention of servants, which condition is so frequently found in the decisions of courts on the subject, indicates the general judgment that the exemption from the operations of the rule *respondeat superior,* which experience has shown to be a valuable aid in securing the ends of justice, should not be sweeping and complete, but should be surrounded by such safeguards as will prevent the neglect of a duty which the hospital can and should perform.[33]

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[30] *Id.* at 92, 96 N.E. at 1092.

[31] 104 Ohio St. 61, 135 N.E. 287 (1922).

[32] See note 1 *supra.*

[33] 104 Ohio St. 61, 73, 135 N.E. 287, 291.

The court also stated that although the donors of funds to charities do not contemplate diversion of such funds for the payment of damages for the negligent acts of servants, they realize that justice requires care in the selection of employees as well as the maintenance of property. Accordingly, the hospital was held liable to the plaintiff for his injuries. The first exception to Ohio's charitable immunity rule was established.

A second exception soon followed. In 1930, the supreme court decided *Sisters of Charity of Cincinnati v. Duvelius*.[34] In the *Duvelius* case, the plaintiff was a registered special duty nurse, not employed by the hospital, who was in the hospital nursing a patient with the consent of the hospital. The plaintiff asserted that she sustained injuries because of the alleged negligence of a hospital employee operating the hospital's passenger elevator. She further contended that the employee was incompetent and unfit, and that the hospital management knew or should have known of the employee's lack of qualifications. The court acknowledged that while immunity was the result of considerations of public policy when the injured party was a direct beneficiary of a charity, such as a patient, other considerations of public policy were equally important; namely, that an innocent third person should not be required to bear the costs of another's negligence. The court reasoned that whatever theory of immunity was applied to justify barring a suit by a patient, it did not follow that a stranger should likewise be barred. It stated that the duty to exercise care to prevent injuries to strangers would result in greater care to patients, and conversely, any encouragement to negligence towards strangers would inevitably be reflected in lack of care to patients. The court held, therefore, that charitable institutions would be treated the same as other corporations as to liability for negligence to strangers and invitees who were lawfully upon the premises.

In *Wadell v. Y.W.C.A.*,[35] a case which was later to prove significant to the continuation of the Ohio rule of limited immunity, the rule of charitable immunity was first applied to an institution other than a hospital. The *Wadell* case involved the alleged negligence of a swimming instructor, employed by the Y.W.C.A., which resulted in an injury to the minor plaintiff. The plaintiff appealed from a judgment *non obstante veredicto*, contending that the defendant failed to exercise due care in its selection of the instructor and that the burden of proof on this issue was on the defendant.

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[34] 123 Ohio St. 52, 173 N.E. 737 (1930).

[35] 133 Ohio St. 601, 15 N.E.2d 140 (1938).

In its affirming opinion, the court stated that the Ohio charitable immunity rule pertained not only to hospitals, but to all public charitable institutions. This case also affirmed the position taken in an earlier Ohio case,[36] that the burden of establishing lack of due care in the selection of an employee was upon the plaintiff. However, the primary and continuing importance of this case was that no distinction was drawn between hospitals and other charitable institutions for the purpose of applying the immunity rule.[37]

Much later, in 1956, forty-five years after charitable immunity was established in Ohio, and at a time when many other states had begun to question the immunity doctrine, the Supreme Court of Ohio re-examined the policy reasons behind the doctrine in *Avellone v. St. John's Hosp.*,[38] and decided that a defense based on immunity would henceforth be rejected. In the *Avellone* case, a former patient brought an action against the hospital alleging that he was negligently permitted to fall from a bed on two different occasions. The hospital demurred to this pleading, raising the defense of immunity. The demurrer case was sustained and appealed to the Ohio Supreme Court. The supreme court stated that although its previous decisions often referred to the various theories for the justification of immunity, its sole basis was that of public policy. The opinion concluded that whatever policy reasons justified a different rule for charities when the first *Taylor* case[39] was decided, such reasons were no longer controlling. Several reasons were given for this conclusion: the social consciousness of the present day government; the prevalence of hospitalization insurance, which provides more funds for hospital operation; the availability of liability insurance; and the fact that hospitals themselves had changed. The court stated:

> It is also noted that the average nonprofit hospital of today is a large well run corporation, and, in many instances, the hospital is so "businesslike" in its monetary requirements for entrance and in its collections of accounts that a shadow is thrown upon the word, "charity," and the base of payment mentioned above is broadened still more.[40]

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[36] Lakeside Hosp. v. Kovar, 131 Ohio St. 333, 2 N.E.2d 857 (1936).

[37] See also Cullen v. Schmit, 139 Ohio St. 194, 39 N.E.2d 146 (1942), where the doctrine was applied in a case involving a church as the defendant, and Newman v. Cleveland Museum of Natural History, 143 Ohio St. 369, 55 N.E.2d 575 (1944), where the defendant was a public museum.

[38] 165 Ohio St. 467, 135 N.E.2d 410 (1956).

[39] See note 1 *supra*.

[40] 165 Ohio St. 467, 474, 135 N.E.2d 410, 415.

In summary, the court believed that the immunity rule was out of step with present day conditions.

The dissenting opinion in the *Avellone* decision commented that the decision abolished the immunity of numerous other charitable organizations in Ohio, stating that the decision could not logically be circumscribed to be applicable to hospitals alone. This concern, however, was to be allayed by later decisions.[41] The dissent also contended that such a sweeping change in policy and law was within the province of the legislature and not the courts.

The first decision involving immunity to follow *Avellone* was *Gibbon v. Y.W.C.A. of Hamilton.*[42] The *Gibbon* case was an action based upon the alleged negligence of employees of the Y.W.C.A. which resulted in the drowning of an individual using the Y.W.C.A.'s pool. The court of appeals held that *Avellone* was controlling, since there was no legal distinction between a hospital corporation and the defendant corporation.

On appeal,[43] the supreme court was presented the issue of whether the *Avellone* decision applied to all charitable institutions in Ohio or only to charitable hospital corporations. The court, after noting the various reasons for a change of policy given in *Avellone*, declined to apply the *Avellone* ruling to all charitable organizations. It said:

> Similarly compelling reasons are not established to the satisfaction of the majority in this case, particularly in light of the recent legislative developments recited herein showing the conflict of views in the area of charitable immunity or liability. Therefore, we decline to again declare an extension or modification of public policy. We feel that under these circumstances the doctrine of *stare decisis* should be applied and followed in order, if for no other reason, to avoid retroactive imposition of liability on a charitable institution which would result from the declaration of a different public policy—and we hold accordingly. Any legislative enactment declaring a different policy could only be prospective in its operation.[44]

It is interesting to note that the question of retroactive liability was not considered in the *Avellone* decision.

At the present time, therefore, the Ohio law relating to charitable immunity can be stated as follows: a charitable institution other than a charitable hospital corporation is, as a matter of public policy, not liable for tortious injury except (1) when the

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41 See Gibbon v. Y.W.C.A. of Hamilton, 170 Ohio St. 280, 164 N.E.2d 563 (1960).

42 159 N.E.2d 911 (Ohio Ct. App. 1959).

43 Gibbon v. Y.W.C.A. of Hamilton, *supra* note 41.

44 Gibbon v. Y.W.C.A. of Hamilton, *supra* note 41, at 288, 164 N.E.2d at 572.

injured person is not a beneficiary of the institution, and (2) when a beneficiary suffers harm as a result of a failure of the institution to exercise due care in the selection or retention of an employee.

Charitable Immunity in Other States

Elsewhere charitable immunity has a speckled past and an uncertain future. What follows is a breakdown of the current status of the doctrine in each state with special emphasis on hospitals. The cases cited represent the most recent ones only when such case has changed the doctrine itself.

ALABAMA: Charitable hospitals have no immunity, although the courts have not foreclosed the possibility that a charitable hospital could be immune in an action by a non-paying patient. *Tucker v. Mobile Infirmary Ass'n,* 191 Ala. 572, 68 So. 4 (1915), *Alabama Baptist Bd. v. Carter,* 226 Ala. 109, 145 So. 443, (1932).

ALASKA: Charitable hospitals have no immunity. *Moats v. Sisters of Charity of Providence,* 13 Alaska 546 (1952).

ARIZONA: Charitable hospitals have no immunity. *Ray v. Tucson Medical Center,* 72 Ariz. 22, 230 P.2d 220 (1952).

ARKANSAS: The property of charitable institutions cannot be reached by execution on a judgment in an action arising out of negligence of their employees. *Fordyce & McKee v. Women's Christian Nat'l Library Ass'n,* 79 Ark. 550, 96 S.W. 155 (1906). However, a statute, Ark. Stat. Ann. § 66-3240, permits suit against an insurance carrier directly when the charitable organization has liability insurance, and liability is not limited by the terms of the policy. In *Ramsey v. American Auto. Ins. Co.,* 356 S.W.2d 236 (1962) the employee of a charitable institution would have been able to recover against the insurance company except for a specific policy provision excluding employees.

CALIFORNIA: Charitable hospitals have no immunity. *Malloy v. Fong,* 37 Cal. 2d 356, 232 P.2d 241 (1951).

COLORADO: Although a charitable hospital has no immunity, no execution may be had under a judgment upon any property or funds of such hospitals which are dedicated to a charitable purpose. *St. Lukes Hosp. Ass'n v. Long,* 125 Colo. 25, 240 P.2d 917 (1952). The effect of this doctrine is that the presence of insurance or assets not devoted to charitable use determines the ability of an injured party to recover.

CONNECTICUT: Charitable hospitals are liable to strangers of the charity for negligence, and it is likely that the same rule would be applied if an employee of the hospital were the party injured. *Cohen v. General Hosp. Soc'y,* 113 Conn. 188, 154 Atl. 435

(1931). Immunity exists for charitable hospitals in actions brought by patients, unless corporate neglect, such as negligence in the selection or retention of employees is shown. *Cashman v. Meriden Hosp.*, 117 Conn. 585, 169 Atl. 915 (1933).

DELAWARE: Charitable hospitals have no immunity. *Durney v. St. Francis Hosp.*, 46 Del. 350, 83 A.2d 753 (1951).

DISTRICT OF COLUMBIA: Charitable hospitals have been held liable for negligence in a suit by a non-patient. *President & Directors of Georgetown College v. Hughes*, 130 F.2d 810 (D.C. Cir. 1942). However, a charitable hospital is not liable to a patient in the absence of corporate negligence, such as negligence in the selection and retention of employees. *White v. Providence Hosp.*, 80 F. Supp. 76 (D.D.C. 1949).

FLORIDA: Charitable hospitals have no immunity. *Nicholson v. Good Samaritan Hosp.*, 145 Fla. 360, 199 So. 344 (1940).

GEORGIA: Charitable hospitals have no immunity in a suit by a paying patient; although execution is limited to the funds derived from paying patients. *Morton v. Savannah Hosp.*, 148 Ga. 438, 96 S.E. 887 (1918); *Executive Comm. of the Baptist Convention v. Ferguson*, 95 Ga. App. 393, 98 S.E.2d 50 (1957). However, charitable hospitals would not appear to be liable except for negligence in the selection or retention of the employees where the injury is to an employee, stranger or a charity patient. *Morton v. Savannah Hosp.*, 148 Ga. 438, 96 S.E. 887 (1918); *Burgess v. James*, 73 Ga. App. 857, 38 S.E.2d 637 (1946). It does appear that no immunity is accorded a charitable hospital to the extent that it is covered by a liability insurance policy. *Cox v. DeJarnetts*, 104 Ga. 664, 123 S.E.2d 16 (1961).

HAWAII: No cases have considered the question of charitable immunity.

IDAHO: A charitable hospital is liable to paying patients for injuries caused by the negligence of the hospital's employees, *Wheat v. Idaho Falls Latter Day Saints Hosp.*, 297 P.2d 1041 (Idaho Sup. Ct. 1956).

ILLINOIS: Although there is no immunity of the hospital from suit, trust fund assets are immune from execution on judgment. *Moore v. Moyle*, 405 Ill. 555, 92 N.E.2d 81 (1950). Thus, existence of liability insurance permits recovery under a judgment.

INDIANA: A hospital is immune from liability for injury to a paying patient unless the hospital was negligent in the selection or retention of the employee. *St. Vincent's Hosp. v. Stine*, 195 Ind. 350, 144 N.E. 537 (1924). However, a charity has been held liable to strangers for negligence and a similar result is likely

if the person injured was an employee. *Winona Technical Institute v. Stolte,* 173 Ind. 39, 89 N.E. 393 (1909).

IOWA: Charitable hospitals have no immunity. *Haynes v. Presbyterian Hosp. Ass'n of Iowa,* 241 Iowa 1269, 45 N.W.2d 151 (1950).

KANSAS: A statute, Kan. Gen. Stat. Ann. § 17-1725, restored charitable immunity which had been ended by the decision in *Noel v. Menninger Foundation,* 175 Kan. 751, 267 P.2d 934 (1954). It appears from the wording of the statute, however, that liability would exist to the extent that insurance is present.

KENTUCKY: Charitable hospitals have no immunity. *Mullikin v. Jewish Hosp. Ass'n of Louisville,* 348 S.W.2d 930 (Ky. Ct. App. 1961).

LOUISIANA: A charitable hospital is not liable to a paying patient except for negligence in the selection or retention of employees. *Jordan v. Touro Infirmary,* 123 So. 726 (La. App. 1922). However, a charity has been held liable where the injured party was a stranger or an employee. *Bougon v. Volunteers of Am.,* 151 So. 797 (La. App. 1934); *Lusk v. United States Fid. & Guar. Co.,* 199 So. 666 (La. App. 1941). A Louisiana statute, La. Rev. Stat. Ann. § 22:655 (1950), authorizes bringing an action directly against the insurer and it has been held that the insurer may not raise the defense of charitable immunity if the insured is a charitable institution. *Stamos v. Standard Acc. Ins. Co.,* 119 F. Supp. 245 (W.D. La. 1954).

MAINE: A charitable hospital is not liable to a patient for negligence on the part of its employees. *Jensen v. Maine Eye and Ear Infirmary,* 107 Me. 408, 78 Atl. 898 (1910). No cases have determined liability towards employees or strangers.

MARYLAND: Charitable hospitals are immune in Maryland. *Perry v. House of Refuge,* 63 Md. 20 (1885). However, a statute, Md. Code Ann. article 48A, § 85 (1957), provides that liability insurance policies issued to charitable institutions must contain a provision estopping the insurer from asserting charitable immunity as a defense.

MASSACHUSETTS: Charitable hospitals are immune from liability for negligence. *McDonald v. Massachusetts Gen. Hosp.,* 120 Mass. 432 (1876). However, liability has been imposed upon the charity where the negligence occurred in the operation of a commercial enterprise. *McKay v. Morgan Memorial Co-op Indus. and Stores,* 272 Mass. 121, 172 N.E. 68 (1930).

MICHIGAN: Charitable hospitals have no immunity. *Parker v. Port Huron Hosp.,* 361 Mich. 1, 105 N.W.2d 1 (1960).

MINNESOTA: Charitable hospitals have no immunity. *Mulliner v. Evangelischer Diakoniessenverein,* 144 Minn. 392, 175 N.W. 699 (1920).

MISSISSIPPI: Charitable hospitals are liable to paying patients, employees, or strangers for the negligence of employees. *Mississippi Baptist Hosp. v. Holmes,* 214 Miss. 906, 55 So. 2d 142 (1951). Although the *Holmes* case did not overrule *Mississippi Baptist Hosp. v. Moore,* 156 Miss. 676, 126 So. 465 (1930), which stated that a charitable hospital is not liable for a non-paying patient except for negligence in selection or retention of an employee, the reasoning of the *Holmes* case is likely the basis for repudiating charitable immunity in Mississippi.

MISSOURI: Hospitals are immune from liability for negligence of their employees. *Dille v. St. Luke's Hosp.,* 355 Mo. 436, 196 S.W.2d 615 (1946). However, a hospital can be held liable when the injury occurs in the conduct of a commercial activity. *Blatt v. George H. Nettleton Home for Aged Women,* 275 S.W.2d 344 (Mo. Sup. Ct. 1955).

MONTANA: No decision in the Montana courts has dealt directly with the issue of charitable immunity. A federal court in Montana has ruled that a charitable hospital is not immune from liability for the negligence of its employees. *Howard v. Sisters of Charity of Leavenworth,* 193 F. Supp. 191 (D.C. Mont. 1961).

NEBRASKA: Hospitals are immune from liability for negligence of employees in actions brought by a paying patient. *Duncan v. Nebraska Sanitarium Benevolent Ass'n,* 92 Neb. 162, 137 N.W. 1120 (1912). However liability has been imposed where the injured party was a stranger. *Marble v. Nicholas Senn Hosp. Ass'n,* 102 Neb. 343, 167 N.W. 208 (1918).

NEVADA: A charitable institution is not liable to beneficiaries for negligence. *Springer v. Federated Church of Reno,* 71 Nev. 177, 283 P.2d 1071 (1955). Although no decisions have involved charitable hospitals, there would apparently be immunity in an action by a non-paying patient. The *Springer* case indicates that liability would exist in an action brought by either a paying patient or a stranger.

NEW HAMPSHIRE: There is no recognition of charitable immunity in New Hampshire. *Welch v. Frisbie Memorial Hosp.,* 90 N.H. 337, 9 A.2d 761 (1939).

NEW JERSEY: After the decision in *Collopy v. Newark Eye and Ear Infirmary,* 27 N.J. 29, 141 A.2d 276 (1958) terminated charitable immunity, the legislature passed N.J. Stat. Ann. tit. 2A, §§ 53A-7 to -11. Under this statute liability to patients of a chari-

table hospital is limited to 10,000 dollars. There is no limitation to liability with respect to injuries to strangers and employees.

NEW MEXICO: No decisions of the New Mexico courts deal with charitable immunity. A federal court, sitting in New Mexico, held charitable hospitals immune where there was no negligence in the selection or retention of employees. *Deming Ladies' Hosp. Ass'n v. Price,* 276 Fed. 668 (8th Cir. 1921).

NEW YORK: Charitable hospitals have no immunity. *Bing v. Thunig,* 2 N.Y.2d 656, 143 N.E.2d 2, 163 N.Y.S.2d 3 (1957).

NORTH CAROLINA: Hospitals are immune from liability to patients except for injury resulting from negligent selection or retention of employees. *Hoke v. Glen,* 167 N.C. 594, 83 S.E. 807 (1914). However, liability has been imposed when the injury is to an employee and it is likely that the same results would occur if the injured party were a stranger. *Cowans v. North Carolina Baptist Hosp.,* 197 N.C. 41, 147 S.E. 672 (1929).

NORTH DAKOTA: Charitable immunity has not been recognized in North Dakota. *Rickbeil v. Grafton Deaconess Hosp.,* 74 N.D. 525, 23 N.W.2d 247 (1946).

OHIO: The Ohio law is exhaustively covered previously in this article.

OKLAHOMA: Charitable immunity is not recognized in an action brought by an employee or a paying patient. *Gable v. Salvation Army,* 186 Okla. 687, 100 P.2d 244 (1940); *Sisters of Sorrowful Mother v. Zeidler,* 183 Okla. 454, 82 P.2d 996 (1938).

OREGON: Charitable hospitals have no immunity in Oregon. *Hungerford v. Portland Sanitarium and Benevolent Ass'n,* 384 P.2d 1009 (1963).

PENNSYLVANIA: Charitable institutions are immune from liability for negligence. *Knecht v. St. Mary's Hosp.,* 392 Pa. 75, 140 A.2d 30 (1958). Charitable immunity is not applicable when the injury is caused in the operation of a commercial enterprise. *Siidekum v. Animal Rescue League,* 353 Pa. 408, 45 A.2d 59 (1946).

RHODE ISLAND: By statute, Rhode Island grants immunity to charitable hospitals in actions by patients. R.I. Gen. Laws Ann. § 7-1-22 (1956). Prior to the enactment of the statute it had been held that no immunity existed. Thus, except in the case of a hospital patient, where immunity exists by virtue of the statute, no immunity is recognized.

SOUTH CAROLINA: Charitable hospitals are immune from liability from negligence. *Lindler v. Columbia Hosp. of Richmond County,* 98 S.C. 25, 81 S.E. 512 (1914). Immunity is not recognized if the injury occurs in conducting a commercial activity.

Eiserhardt v. State Agricultural & Mechanical Soc'y, 235 S.C. 305, 111 S.E.2d 568 (1959).

SOUTH DAKOTA: No cases have considered the question of charitable immunity.

TENNESSEE: Charitable hospitals have no immunity. However, execution under a judgment can only reach property which is not directly and exclusively devoted to charitable purposes. *McLeod v. St. Thomas Hosp.*, 170 Tenn. 423, 95 S.W.2d 917 (1936).

TEXAS: A charitable hospital is not liable to a patient or stranger for negligence unless there has been negligence in the employee's selection or retention. *Baptist Memorial Hosp. v. McTighe*, 303 S.W.2d 446 (Tex. Civ. App. 1957). Liability has been imposed upon a charity for negligent injury to an employee, although the rule appears limited by the facts of the case to instances where corporate negligence is shown. *Hotel Dieu v. Armendarez*, 210 S.W. 518 (Tex. Com. App. 1919). But see *Felan v. Lucey*, 259 S.W.2d 302 (Tex. Civ. App. 1953) which does not appear to recognize any immunity where the injured person is an employee. However, a charitable hospital is liable to a patient for corporate negligence consisting of furnishing unsafe appliances. *Medical and Surgical Memorial Hosp. v. Cawthorn*, 229 S.W.2d 932 (Tex. Civ. App. 1949).

UTAH: Charitable hospitals have no immunity. *Sessions v. Thomas D. Dee Memorial Hosp. Ass'n*, 94 Utah 460, 78 P.2d 645 (1938).

VERMONT: Charitable hospitals have no immunity. *Foster v. Roman Catholics Diocese of Vermont*, 116 Vt. 124, 70 A.2d 230 (1950).

VIRGINIA: Charitable hospitals are liable to patients for negligence in the selection or retention of employees. *Norfolk Protestant Hosp. v. Plunkett*, 162 Va. 151, 173 SE. 363 (1934). No immunity is recognized where the injured person is a stranger, and it is likely that the same result would be reached where an employee was injured. *Hospital of St. Vincent of Paul v. Thompson*, 116 Va. 101, 81 S.E. 13 (1914).

WASHINGTON: A charitable hospital is apparently immune from suit for liability for negligence in actions brought by non-paying patients. *Lyon v. Tumwater Evangelical Free Church*, 47 Wash. 2d 202, 287 P.2d 128 (1955). However, a charitable hospital is liable to such patients for injury resulting from corporate negligence, such as negligence in the selection or retention of employees. *Richardson v. Carbon Hill Coal Co.*, 6 Wash. 52, 32 Pac. 1012 (1893), or for the failure to furnish suitable equipment. *Miller v. Sisters of St. Francis*, 5 Wash. 2d 204, 105 P.2d 32 (1940). A

charitable hospital is liable to a paying patient for negligence. *Pierce v. Yakima Valley Memorial Hosp. Ass'n*, 43 Wash. 2d 162, 260 P.2d 765 (1953). But no immunity exists where the injured party is a stranger, *Heckman v. Sisters of Charity*, 5 Wash. 2d 699, 106 P.2d 593 (1940).

WEST VIRGINIA: Charitable hospitals are immune from liability to patients except for negligence in the selection or retention of employees. *Roberts v. Ohio Valley Gen. Hosp.*, 98 W.Va. 476, 127 S.E. 318 (1925). No immunity is recognized where the injured person is a stranger and probably none where the injured person is an employee. *Koehler v. Ohio Valley Gen. Hosp. Ass'n*, 137 W.Va. 764, 73 S.E.2d 673 (1952).

WISCONSIN: Charitable hospitals have no immunity. *Kojis v. Doctors Hosp.*, 12 Wis. 2d 367, 107 N.W.2d 131, *supplemental opinion* at 292 (1961).

WYOMING: A charitable hospital is immune from liability to patients unless negligence is shown in the selection or retention of the employee. *Bishop Randall Hosp. v. Hartley*, 24 Wyo. 408, 160 Pac. 385 (1916). No cases discuss whether immunity is recognized in actions by strangers or employees.

PUERTO RICO: No immunity of charitable institutions is recognized. *Tavarez v. San Juan Lodge*, 68 P.R.R. 681 (1948).